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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MILTON E. BONILLA,

Defendant and Appellant.

A123710

(Contra Costa County
Super. Ct. No. 50800458)

This is an appeal from judgment following the conviction by jury of appellant Milton E. Bonilla for felony possession of an assault weapon (Pen. Code, § 12280, subd. (b))¹ and felony possession of a deadly weapon (§ 12020, subd. (a)(1)). Appellant's counsel has filed a brief pursuant to *People v. Kelly* (2006) 40 Cal.4th 106 and *People v. Wende* (1979) 25 Cal.3d 436, requesting that we conduct an independent review of the entire record on appeal. Having done so, we affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

On January 18, 2008, an information was filed charging appellant with felony violations of section 12280, subdivision (b), possession of an assault weapon (count 1), and section 12020, subdivision (a)(1), possession of a deadly weapon in the form of a multiburst trigger activator (count 2).

Trial by jury began October 2, 2008. The evidence presented at trial established that, on June 17, 2007, at about 3 p.m., appellant was pulled over by Officer Mark Carducci of the San Pablo Police Department after the officer noticed that appellant's

¹ All further statutory references are to the Penal Code.

vehicle did not have functioning brake lights. Officer Carducci advised appellant why he was pulled over and requested his license, registration and proof of insurance. Appellant told the officer that the vehicle was not registered and that its license plates had been removed from another vehicle. When Officer Carducci ran the license plates for appellant's vehicle, he discovered the plates expired in 1998 and were for a 1978 Camaro, which resembled appellant's vehicle.

Officer Carducci told appellant to exit his vehicle because it was going to be towed for expired registration and, because the stop occurred in a high-crime area he asked appellant whether he was carrying anything illegal. Appellant responded that he had a pocket knife. After searching appellant, Officer Carducci found a pocket knife in his pants pocket and another in his vest pocket, both of which the officer removed.

Officer Carducci next asked whether there was anything illegal in the vehicle, to which appellant responded that he had a handgun behind the passenger seat. The officer's subsequent search of the vehicle revealed a locked plastic gun box with an unloaded .40-caliber handgun behind the passenger seat, three loaded .40-caliber handgun magazines in the center console, and a 14-inch fixed blade knife in a sheath behind the driver's seat. In the trunk, Officer Carducci found a large duffle bag containing, among other items, .308-caliber ammunition, and two knives, one of which was in the form of a bayonet that could be attached to a rifle. Also in the trunk, Officer Carducci found a locked black rifle bag with five magazine slots on the sides, each housing a loaded high capacity .308-caliber magazine. Appellant advised the officer that the key to the rifle bag was in his pocket. When Officer Carducci retrieved the key and unlocked the bag, he found a .308-caliber assault rifle.

Elsewhere in the trunk, Officer Carducci found a GAT Trigger Enhancement System, which he identified as a type of multiburst trigger activator that can be attached to the trigger of a semiautomatic weapon to increase the rate of fire. Inside the packaging of the trigger enhancement system was a certificate of legality issued by the Federal Bureau of Alcohol, Tobacco and Firearms (ATF), however, Officer Carducci knew that such weapons were illegal in California.

Officer Ignatius Chinn, a San Francisco Police officer who was formerly a special agent supervisor with the firearm division of the California Department of Justice (DOJ), was undisputedly qualified as an expert in the area of identifying firearms and multiburst trigger activators. At trial, Officer Chinn identified the rifle found in appellant's trunk as a semiautomatic assault weapon, illegal in California since 2000. (§§ 12276, 12276.1.) Officer Chinn also testified that the trigger enhancement system found in appellant's vehicle was synonymous with a multiburst trigger activator and was in working order. While such devices are not prohibited by federal law, they are prohibited by California law.

Vicki Lyman, manager of the firearms licensing and permit unit of the DOJ, testified regarding the assault weapon registration, certificate of eligibility and California firearms licensing check programs. Among other things, Lyman explained that California, after instituting a state-wide ban on assault weapons, had allowed four registration periods for private citizens who had purchased assault weapons before a specified date. The DOJ received appellant's application to register his assault weapon in December of 2000. However, a final disposition sheet dated May 3, 2001, noted that appellant had a firearms prohibition based on a condition of probation stemming from a prior arrest, and thus was prohibited from registering his weapon.² Accordingly, a letter was sent to appellant on May 18, 2001, instructing him to turn in the weapon to local law enforcement. At no time after that date were modifications made to appellant's registration status.

On cross-examination, Lyman was shown a letter generated by Yvonne Wright, supervisor for the Bureau of Firearms, dated August 8, 2007. According to this letter, a

² On January 21, 2001, an Oakland police officer found two loaded semiautomatic handguns under the front driver's seat of appellant's vehicle after he was pulled over for running two stop signs. Appellant was thereafter unable to provide the officer with proof that he had a permit for the guns, which were loaded and concealed. At trial, the jury was instructed that it could consider this evidence only for the limited purpose of determining whether appellant knowingly possessed the assault weapon and multiburst trigger activator in this case.

registration for appellant's assault weapon and handgun had been found in a record check. Lyman explained, however, that a record in the California Firearms Information System database stating that a registration is on file with the DOJ does not mean the firearm was actually registered. On November 30, 2007, Lyman generated a letter indicating that an assault weapon registration was found for appellant, but that it was determined by the DOJ that he was ineligible to register or possess such weapon.

Appellant testified at trial in his own defense, and explained that he possessed the assault rifle and had a general interest in guns because he had previously been employed as a licensed armed security guard and was in the process of developing a new weapon for the military. Appellant studied physics at the University of California at Berkeley.

Appellant explained that his vehicle registration was expired and his vehicle contained several weapons because he was returning the vehicle to a storage unit, where it was usually kept, and had put the weapons inside the vehicle to conserve space in the storage unit.³ Appellant claimed, contrary to the police report, that he had in fact alerted the officer to the presence of other weapons in his vehicle, but admitted failing to tell the officer about the magazine clips in the center console. Appellant told the officer that he was not sure what was in the trunk. Appellant mistakenly told the officer he was carrying only one pocket knife on his person because he forgot he was carrying the second one.

Appellant admitted knowing the characteristics of an assault rifle because he had studied the subject in the Penal Code. Appellant had filled out an application to register his assault rifle and believed the gun was therefore properly registered. Appellant admitted his prior conviction in 2001 for carrying a concealed weapon and a loaded gun, for which he was on probation until 2004. Appellant claimed, however, that he never received the letter from the DOJ on May 18, 2001, advising him that he was prohibited from carrying the assault rifle due to the prior conviction.⁴ He further stated that he had

³ Appellant admitted putting the license plates from his other car, which had broken down, on the Camaro, even though he knew this was illegal.

⁴ The letter from the DOJ was addressed to appellant's home address on Mather Street.

contacted the DOJ in 2006 regarding the registration of another of his guns, and was not informed that his weapons had become unregistered.

Appellant admitted buying the trigger enhancement system from a mail order catalogue in 1998 or 1999. Appellant believed the system was designed to adjust the trigger to improve the accuracy of the gun's fire. He did not know it was a multiburst trigger activator, or that it was illegal in California, and in fact was not familiar with the term "multiburst trigger activator." Although appellant opened the package, he never used the system.

Following trial, the jury found appellant guilty as charged. Before sentencing, the trial court denied a request by appellant to reduce the two felony convictions to misdemeanors. In doing so, the trial court reasoned that, among other things, appellant had a pattern of unlawfully possessing guns, with his most recent conviction being the most serious, and was "smart enough to know . . . that he had no right to possess that assault rifle."

The prosecution requested that appellant receive a total aggravated sentence of three years and eight months for counts 1 and 2. The trial court denied the prosecution's request. Instead, the trial court suspended imposition of a sentence for both counts, and admitted appellant to a five-year period of formal probation subject to several terms and conditions, including serving a one-year term in county jail and refraining from possessing or controlling any firearm or weapon. The trial court also granted appellant 510 days of presentence custody credit. Appellant thereafter filed this timely appeal.

DISCUSSION

As we previously stated, appellant's appointed counsel has filed an opening brief setting forth the material facts, but raising no issue for our consideration. Counsel requests that we independently review the record to decide whether there exists any nonfrivolous issue for appeal. (*People v. Kelly, supra*, 40 Cal.4th 106; *People v. Wende, supra*, 25 Cal.3d 436.) In doing so, counsel has attested that appellant was advised of his right to file his own brief with this court. Appellant has failed to file such a brief.

After an independent review of the record, we agree with appellant's counsel that there are no reasonably arguable legal or factual issues for our consideration. Appellant, represented by competent counsel, was found guilty by a jury of a felony violation of section 12280, subdivision (b), possession of an assault weapon, and a felony violation of section 12020, subdivision (a)(1), possession of a deadly weapon, to wit, a multiburst trigger activator. The jury's findings were supported by the evidence, set forth above.

The trial court thereafter denied appellant's request to reduce both counts to misdemeanor offenses. The trial court suspended imposition of a sentence and placed appellant on formal probation for five years subject to several terms and conditions, including serving a one-year term in county jail and refraining from possessing or controlling any firearm or weapon. The lower court's judgment was lawful. (§§ 12280, 12020; Cal. Rules of Court, rules 4.414, 4.423.)

Having ensured appellant received adequate and effective appellate review, we thus affirm the trial court's rulings. (*People v. Kelly*, *supra*, 40 Cal.4th at pp. 112-113, 122-123; *People v. Wende*, *supra*, 25 Cal.3d at pp. 441-442.)

DISPOSITION

The judgment is affirmed.

Jenkins, J.

We concur:

Pollak, Acting P. J.

Siggins, J.